IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

WRIT PETITION NO. 2302 OF 2006

Diamond Sagar Co-operative Housing
Society Ltd. ... Petitioner.

V/s.

Municipal Corporation of
Greater Mumbai & Others. ... Respondents.

Mr.R.M. Nakhwa with Mr. V.B. Dhavan for the Petitioner.

Mr. R.M. Vanoo for Respondent Nos.5 and 7.

Mrs. A.R. Joshi for M.C.G.M.

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CORAM : DR. D.Y. CHANDRACHUD,J.

18TH SEPTEMBER, 2006.

P.C. :

1. The Petitioner before the Court is a Co-operative Housing Society consisting of owners of premises in a building constructed on land bearing Survey No.25(part), C.T.S.No.52, 52/1 to 33, 54, 53, 53-1 to 33 at S.V. Road, Jogeshwari (West), Mumbai.

2. The Builder - Developer is the fifth Respondent in this proceeding. The fifth Respondent constructed a building consisting of 'A' and 'B' wings comprising of 80 flats and 6 shops. A third wing 'C' wing was also constructed. There is a separate Co-operative Society in respect of 'C' wing which is impleaded as Respondent No.8 to this proceeding. In paragraph 5 of the Petition, it

has been stated that on 31st December 1992, almost 98% of the flat purchasers took possession of their flats. The dispute in the present case arose on account of the failure to pay property taxes. The Municipal Corporation issued a warrant of attachment on 31st December 2003 (Exhibit "F") for the recovery of property taxes amounting in all to Rs.37,03,962/-. Counsel appearing on behalf of the Municipal Corporation has handed over a statement to the Court under which, as on 13th September 2004, the total outstandings on account of property taxes were Rs.37,38,255/-.

3. The Petitioners have relied upon an alleged undertaking furnished by the Developer on 27th March 1999 under which the Developer agreed to pay the property taxes until the Occupation Certificate was obtained. An affidavit in reply has been filed on behalf of the Developer in which it has been stated that all the flat and shop purchasers have been in actual occupation of their premises since May 1995. Reliance has been placed on an undertaking by the Petitioners to the Municipal Corporation on 27th November 2002 whereby the Petitioners had undertaken to pay the balance of the dues of property tax by 25th March 2003. According to the fifth Respondent, he had addressed a letter on 28th November 1996 to all the purchasers making a grievance of the fact that they have not paid any amount towards the maintenance and other taxes. The fifth Respondent has denied the

authenticity of the alleged undertaking annexed at Exhibit "A" of the Petition. In any case, it is submitted that thereafter, the Petitioners furnished a categorical undertaking to the first Respondent to pay the balance of the dues of property taxes after the Occupation Certificate was obtained in the year 2001. It is an admitted position that the Occupation Certificate was issued on 21st March 2001 and the Co-operative Society was registered on 2nd December 2004.

4. Under Section 146 of the Mumbai Municipal Corporation Act, 1888, the primary liability to pay property taxes is upon the actual occupier. At the hearing of the Petition, there is a consensus between the Petitioner on the one hand and the fifth Respondent on the other to the effect that the fifth Respondent has agreed to pay all the outstandings on account of property taxes to the Municipal Corporation for the period prior to May 1995. Parties have proceeded on the statement made in paragraph 11 of the affidavit filed by the fifth Respondent that in May 1995, a majority of the flat and shop purchasers had taken possession of their respective units.

5. Accordingly, Counsel on behalf of the fifth Respondent states that any arrears on account of the property taxes as on 1st May 1995 shall be paid over by the fifth Respondent to the Municipal Corporation within a

period of four weeks from today on the first Respondent being informed of the outstandings as of 1st May 1995. Counsel appearing on behalf of the Municipal Corporation states that within a period of two weeks from today, the fifth Respondent shall be informed of the outstandings due and payable by the Developer as of 1st May 1995. In the event the fifth Respondent fails to pay the arrears within a period of two weeks from the date of the intimation, the Corporation will be at liberty to take steps in accordance with law against fifth Respondent.

6. In so far as the members of the Co-operative Society are concerned, Counsel appearing on behalf of the Petitioner states that the Petitioner for and on behalf of the members admit the liability to pay the arrears of the property taxes on and after 1st May 1995. In order to facilitate payment by the individual members, the Municipal Corporation states through Counsel that pursuant to the provisions of Section 209A, the Municipal Corporation shall carry out a separate assessment unitwise in respect of each of the flats/shops in wings "A" and "B". The Municipal Corporation shall give credit to the amount which has been paid in the meantime on behalf of the Petitioner. The Petitioner shall furnish within a period of two weeks to the Municipal Corporation details of the individual units consisting of flats or as the case may be, shops and the names of the concerned members in occupation with a request for individual assessment under

Section 209 A. The Municipal Corporation shall carry out assessment separately in respect of each flat and shop within a period of four weeks thereafter and furnish intimation thereof to the Petitioner. In the event that the individual flat/shop owners do not pay the outstandings thereafter within a period of four weeks, the Municipal Corporation shall be at liberty to take steps in accordance with law against the defaulting unit holders. This exercise shall carried out in respect of wings "A and "B" which forms the subject matter in dispute in the present case and in respect of which, the Petitioner has been registered as a Co-operative Housing Society. The Municipal Corporation has given to the Petitioner the benefit of the circular (Exhibit "E") dated 12th February 2001 with effect from 1st February 2001.

7. In view of the directions which have been issued above, the Municipal Corporation shall not taken any further steps pursuant to the Warrant of Attachment issued to the Petitioner. The Warrant of Attachment shall stand set aside. After the exercise of segregation is carried out, it will be open to the Municipal Corporation to take steps with regard to any default made by an individual unit holder for the period after 1st May 1995. Counsel appearing on behalf of the Petitioner has stated that in the event of the Municipal Corporation being required to sell the flat or shop of a defaulting member, the Society shall enroll the flat or shop purchaser concerned who has

purchased the premises in auction.

8. Since no other issue is pressed on either side, the Petition is disposed of in the aforesaid terms.